BOMBAY ACT No. I OF 1905.[1]

[*3rd June, 1905.*]

An Act to establish a Court of Wards in the Bombay Presidency.

Preamble. WHEREAS it is expedient to establish a Court of Wards in the Bombay Presidency;

And whereas the previous sanction of the Governor General required by section 5 of the [2] Indian Councils Act, 1892, has been obtained for the passing of this Act;

55 and 56 Vict., c. 14.

It is hereby enacted as follows:—

Short title. 1. (*1*) This Act may be called the Bombay Court of Wards Act, 1905.

Extent. (*2*) It shall extend to the whole of the Bombay Presidency, except the City of Bombay and Aden.

Definitions. 2. In this Act unless there is anything repugnant in the subject or context,

(*a*) "Government ward" shall mean any person of whose property, or of whose person and property, the Court of Wards may, for the time being, have the superintendence under this Act;

(*b*) "land-holder" shall mean,

(*i*) in the case of minors and persons adjudged by a competent Civil Court to be of unsound mind and incapable of managing their affairs, a holder as defined in the [3] Bombay Land-Revenue Code, 1879; and

Bom. V of 1879.

(*ii*) in all other cases, a zamindár, jágirdár, saranjámdár, inámdár, tálukdár, malek, and a khot, and any person not hereinbefore specified who is interested in land and belongs to a class of which the Governor in Council has declared the members to be land-holders for the purposes of this Act:

provided that no person who permanently resides, or carries on business, or personally works for gain, in the City of Bombay shall be deemed or declared to be a land-holder for the purposes of this Act;

(*c*) "District Court" shall include the Court of an Assistant Judge invested under section 19 of the [4] Bombay Civil Courts Act, 1869, with all the powers of a District Judge; and

XIV of 1869.

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1 For Statement of Objects and Reasons, *see* Bombay Government Gazette, 1904, Pt. VII, p. 83; for Report of Select Committee, *see ibid*, 1905, Pt. VII, p. 14, and for Proceedings in Council, *see ibid*, 1904, Pt. VII, pp. 144, 208; *ibid*, 1905, Pt. VII, p. 42.

2 Collection of Statutes relating to India, Vol. II, p. 734.

3 Vol. II of this Code, p. 631.

4 Vol. I of this Code, p. 92.

(*d*) "minor" shall mean a person who, under the provisions of the [1] Indian Majority Act, 1875, is to be deemed not to have attained his majority. IX of 1875.

Commissioner to be Court of Wards.

3. Subject to the provisions of section 12, the Commissioner shall be the Court of Wards for the limits of his division:

provided that the Governor in Council may, if he thinks fit, by notification in the *Bombay Government Gazette*,

(*a*) appoint a special officer to be the Court of Wards for a division in lieu of the Commissioner; or

(*b*) constitute a board consisting of the Commissioner and any other officer or officers to be the Court of Wards for a division; or

(*c*) [2] appoint any other officer or officers to be a Court of Wards for any part of the Bombay Presidency, and direct that such part shall thereupon be excluded from the jurisdiction of the Court of Wards of any division in which it lies wholly or partly.

Assumption of superintendence by Court of Wards of property of disqualified land-holder.

4. (*1*) The Court of Wards may, with the previous sanction of the Governor in Council, assume the superintendence of the property of any land-holder holding land within the local limits of its jurisdiction who is disqualified to manage his own property:

provided that in the case of a land-holder disqualified under clause (*b*) or (*c*) of sub-section (*1*) of section 5 such assumption shall be sanctioned only where the Governor in Council is of opinion that it is expedient in the public interests to preserve the property of such land-holder for the benefit of his family, and that the said property is of such value that economical management by the Court of Wards is practicable.

(*2*) No sanction given under sub-section (*1*) shall be called in question in any Court, except in the case of a land-holder disqualified under section 5, sub-section (*1*), clause (*a*), where proceedings are instituted within three months of the giving of the sanction.

Land-holders to be deemed disqualified in certain cases.

5. (*1*) The following land-holders shall, for the purposes of section 4, be deemed to be disqualified to manage their own property, namely:—

(*a*) minors;

(*b*) females declared by the District Court, on the application of the Collector and after such judicial inquiry as it thinks necessary, to be unfitted to manage their own property;

(*c*) persons declared by the District Court, on the like application and after the like inquiry, to be incapable of managing, or unfitted to manage, their own property owing to

(i) any physical or mental defect or infirmity, or

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[1] General Acts. Vol. II.

[2] For notification appointing the Táluqdárí Settlement officer to be a Court of Wards for the whole of the area to which the Gujarát Táluqdárs' Act, 1888 (Bom. Act 6 of 1888), extends, and directing that that area shall be excluded from the jurisdiction of the Commissioner, Northern Division, as Court of Wards of that Division, *see* Bombay Government Gazette, 1908, Pt. I, p. 1474.

(ii) such habits as cause, or are likely to cause, injury to their property or to the well-being of their inferior holders ; and

(*d*) persons adjudged by a competent Civil Court to be of unsound mind and incapable of managing their affairs.

(*2*) No appeal shall lie from any declaration under clause (*b*) or (*c*) of sub-section (*1*).

Assumption of superintendence where Government officer appointed guardian.

6. Where any officer of Government is appointed or declared to be guardian of the property, or of the person and property, of a minor under section 7, sub-section (*1*), of the [1] Guardians and Wards Act, 1890, he shall intimate the fact to the Court of Wards, and the Court of Wards may thereupon, with the previous sanction of the Governor in Council, assume the superintendence of the property, or of the person and property, of such minor.

VIII of 1890.

Superintendence not to be assumed where guardian appointed except with consent of District Court.

7. The Court of Wards shall not assume the superintendence of the property, or of the person and property, of any minor of whose property, or of whose person and property,

(*a*) a guardian has been appointed by will or other instrument, or

(*b*) a guardian other than an officer of Government has been appointed or declared under section 7, sub-section (*1*), of the [1] Guardians and Wards Act, 1890,

VIII of 1890.

except with the previous consent of the District Court.

Superintendence not to be assumed under section 4 in case of undivided Hindu family unless all co-sharers disqualified ;

8. (*1*) The Court of Wards shall not assume under section 4, sub-section (*1*), the superintendence of the property of any family which is undivided according to Hindu law, except where all the co-sharers are disqualified under sub-section (*1*) of section 5.

but may be assumed in other case.

(*2*) Where two or more land-holders are co-sharers otherwise than as co-sharers in a family which is undivided according to Hindu law and one of such co-sharers is disqualified under sub-section (*1*) of section 5, the Court of Wards may obtain partition on behalf of the disqualified land-holder, by suit or otherwise, and assume the superintendence of the property allotted to such land-holder in the partition.

Assumption of superintendence by Court of Wards on application of land-holder.

9. (*1*) Any land-holder may apply in writing to the Governor in Council to have his property placed under the superintendence of the Court of Wards, and the Governor in Council may on such application, where he is of opinion that it is expedient in the public interests to preserve the property of such land-holder for the benefit of his family and that the said property

[1] General Acts, Vol. V.

is of such value that economical management by the Court of Wards is practicable, order the Court of Wards to assume the superintendence of the property.

(*2*) Where property is held by co-sharers in undivided shares, an application signed by co-sharers holding an aggregate interest of not less than three-fourths of the whole property shall, for the purposes of sub-section (*1*), be deemed to be an application by a land-holder in respect of such property:

provided, *firstly*, that no order shall be made under sub-section (*1*) where it appears to the Governor in Council doubtful whether the aggregate interest of the co-sharers signing any such application amounts to not less than three-fourths of the whole property; and

provided, *secondly*, that nothing in this Act shall be deemed to prevent any co-sharer other than those signing any such application from obtaining partition of his share, whether by suit or otherwise.

(*3*) An order made under sub-section (*1*) shall be sufficient to authorize the Court of Wards to assume the superintendence of the property referred to therein, and no such order shall be called in question in any Court.

Provisions for temporary custody of heirs and protection of property in certain cases.

10. (*1*) Whenever the Collector receives information that any land-holder is, or should be, disqualified under sub-section (*1*) of section 5, or that any land-holder has died and that his heir is, or should be, so disqualified, he may apply to the District Court, and the District Court may authorize the Court of Wards to

(*a*) take such steps and make such order for the temporary custody and protection of the property as the Court of Wards thinks fit; and

(*b*) where the land-holder or heir is a minor, direct that the person (if any) having the custody of the minor shall produce him or cause him to be produced at such place and time and before such person as the Court of Wards may appoint, and make such order for the temporary custody and protection of the minor as the Court of Wards thinks fit:

provided that, where the minor is a female and belongs to a class the females of which do not usually appear in public, her production shall be required only in accordance with the manners and customs of the country.

(*2*) Whenever the Court of Wards is authorized to proceed under sub-section (*1*) it shall forthwith report its action for the information of the Governor in Council.

(*3*) No appeal shall lie from any order of authorization under sub-section (*1*), except in the case of a land-holder disqualified under section 5, sub-section (*1*), clause (*a*).

Assumption of superintendence

11. Where the Court of Wards assumes the superintendence of the property of any land-holder disqualified under clause (*a*) or (*d*) of section 5, sub-section

(*1*), it may, with the previous sanction of the Governor in Council, assume the superintendence of his person also :

provided that nothing in this section shall authorize the Court of Wards to assume the superintendence of the person of a female who is married and is in the custody of her husband.

by Court of Wards of person of disqualified land-holder in certain cases.

12. Where a disqualified land-holder or a land-holder who has been made a Government ward in pursuance of an order under section 9, sub-section (*1*), holds land within the territorial jurisdiction of two or more Courts of Wards, such one only of the Courts of Wards as the Governor in Council may determine in this behalf shall assume the superintendence of the property, or of the person and property, of the land-holder.

Assumption of superintendence by Court of Wards where land-holder holds land in more than one jurisdiction.

13. (*1*) Whenever the Court of Wards assumes the superintendence of the property of any land-holder under this Act, the fact of such assumption, and the date on which it was sanctioned by the Governor in Council, shall be notified in the *Bombay Government Gazette* and in such other manner as the Governor in Council may, by general or special order, direct.

Assumption of superintendence to be notified and to extend to whole of Government ward's property.

(*2*) On and with effect from the date of such sanction, the whole of the property, moveable and immoveable, of such land-holder, whether the existence of any such property is known to the Court of Wards or not, shall be deemed to be under the superintendence of the Court of Wards.

(*3*) Any property which the Government Ward may inherit or acquire by succession subsequently to the date of such sanction shall also be deemed to be under the superintendence of the Court of Wards.

(*4*) The Court of Wards may, in its discretion, assume, or refrain from assuming, the superintendence of any property which the Government ward may acquire otherwise than by inheritance or succession subsequently to the date of such notification.

14. (*1*) On the issue of a notification under section 13, sub-section (*1*), the Court of Wards shall publish in the *Bombay Government Gazette*, and in such other manner as the Governor in Council may, by general or special order, direct, a notice, in English and also in the vernacular, calling upon all persons having claims against the Government ward or his property to submit the same in writing to it within six months from the date of the publication of the notice.

Publication of notice to claimants against Government ward.

(*2*) Where the Court of Wards is satisfied that any claimant was unable to comply with the notice published under sub-section (*1*), it may allow his claim to be submitted at any time after the date of the expiry of the period fixed therein ; but any such claim shall, notwithstanding any law, contract, decree or award to the contrary, cease to carry interest from the date of the expiry of such period until submission.

(*3*) Every claim against the Government ward or his property (other than a claim on the part of Government) not submitted to the Court of Wards in

compliance with the notice published under sub-section (*1*), or allowed to be submitted under sub-section (*2*), shall, save in the cases provided for by section 18, sub-section (*2*), clause (*c*), and by sections 7 and 13 of the [1] Indian Limitation Act, 1877, be deemed for all purposes and on all occasions, whether during the continuance of the superintendence or afterwards, to have been duly discharged, unless, in any suit or proceeding instituted by the claimant, or by any person claiming under him, in respect of any such claim, it is proved to the satisfaction of the Court that he was unable to comply with the notice published under sub-section (*1*). XV of 1877.

Power to require claimants to furnish full particulars and documents.

15. (*1*) The Court of Wards may by written order require that any claimant submitting his claim shall, within such reasonable time as it may prescribe in such order, furnish full particulars thereof, and produce all documents (including entries in books of account) on which he relies to support his claim, together with a true copy of every such document:

provided that, where the claim relates to an amount secured by a decree or award, it shall be sufficient for the claimant to produce before the Court of Wards a certified copy of the decree and a certificate from the Court which passed or is executing the same declaring the amount recoverable thereunder, or a true copy of the award and a statement of the sum recoverable thereunder, as the case may be; and, where the claim is pending adjudication in any Court or has been referred to arbitration, it shall be sufficient for the claimant to produce a certified copy of the plaint, or a true copy of the reference to arbitration, as the case may be.

(*2*) The Court of Wards shall, after marking, for the purpose of identification, every original document so produced and verifying the correctness of the copy, retain the copy and return the original to the claimant.

(*3*) Where any document, which is in the possession or under the control of a claimant, is not produced by him in accordance with an order under sub-section (*1*), the document shall not be admissible in evidence against the Government ward, whether during the continuance of the superintendence or afterwards, in any suit brought by such claimant, or by any person claiming under him, in respect of any claim to which such document relates, unless it is proved to the satisfaction of the Court that he was unable to produce such document as required by such order.

Investigation and decision of claims.

16. (*1*) On receipt of all claims submitted in compliance with the provisions of sections 14 and 15, the Court of Wards shall proceed to investigate such claims and shall decide, subject to the provisions of sub-section (*3*), which of them are to be wholly or partly admitted or wholly or partly rejected, as the case may be, and shall communicate its decision in writing to each claimant concerned.

(*2*) Where the Court of Wards has admitted any claim under sub-section (*1*), it may make to the claimant a proposal in writing for the reduction of the claim,

[1] *See* Act 15 of 1877 as modified up to 31st December, 1900.

or of the rate of interest to be paid in future, or of both; and if such proposal, or any modification of it, is accepted by the claimant, and his acceptance is finally recorded and attested by the Court of Wards or by any Revenue-officer not below the rank of an Assistant or Deputy Collector whom the Governor in Council may, by general or special order, appoint in this behalf, it shall be conclusively binding upon the claimant:

provided that if, when the superintendence of the property by the Court of Wards is withdrawn, any portion of the claim reduced as aforesaid is still unsatisfied, the claimant shall be entitled to recover a sum bearing the same proportion to the original claim admitted under sub-section (*1*) as the unsatisfied portion bears to the reduced claim.

(*3*) Subject to the provisions of sub-section (*2*), nothing in this section shall be construed to bar the institution of a suit in a Civil Court for the recovery of a claim against a Government ward or his property which has been duly submitted to the Court of Wards:

provided that no decision of the Court of Wards under this section shall be proved in any such suit as against the defendant.

Execution of decrees to be stayed till certificate filed.

17. (*1*) On the publication of a notice under section 14, sub-section (*1*), no proceeding in execution of any decree against the Government ward or his property shall be instituted or continued until the decree-holder files a certificate from the Court of Wards that the decree-claim has been duly submitted, or until the expiration of one month from the date of receipt by the Court of Wards of a written application for such certificate, accompanied by a certified copy of the decree.

(*2*) Any person holding a decree against the Government ward or his property shall be entitled to receive from the Court of Wards, free of cost, the certificate required by sub-section (*1*).

XV of 1877. XIV of 1882.

(*3*) In computing the period of limitation prescribed by the[1] Indian Limitation Act, 1877, or by section 230 of the[2] Code of Civil Procedure, for any application for the execution of a decree, proceedings in which have been stayed or temporarily barred by reason of the claim not having been duly submitted, the time from the date of the notice published under section 14, sub-section (*1*), or of the decree if it was passed subsequently to the publication of the notice, to the date of due submission shall be excluded.

Report to Government.

18. (*1*) When all claims have been investigated under section 16, the Court of Wards shall submit to the Governor in Council a schedule of the debts and liabilities of the Government ward, and the Governor in Council may, where the property appears to be involved beyond all hope of extrication, or for any other sufficient reason, by order published in the *Bombay Government Gazette*, direct that, on a date to be fixed by the order, the superintendence of the

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[1] *See* Act 15 of 1877 as modified up to 31st December, 1900.
[2] *See* Act 14 of 1882 as modified up to 1st December, 1899.

property, or of the person and property, of the Government ward by the Court of Wards shall be withdrawn.

(*2*) On the date so fixed

(*a*) the superintendence shall terminate ;

(*b*) the owner of the property under superintendence shall be restored to the possession thereof, subject to any contracts entered into by the Court of Wards for the preservation or benefit of such property ; and

(*c*) the claims referred to in section 14, sub-section (*3*), shall revive.

(*3*) In calculating the periods of limitation applicable to suits to recover and enforce claims revived under sub-section (*2*), clause (*c*), the time during which such superintendence has continued shall be excluded.

Delegation of powers by Court of Wards.

19. (*1*) With the general or special sanction of the Governor in Council, the Court of Wards may, from time to time, delegate all or any of its powers to the Collector of any district in which any part of the property of a Government ward is situated, or to any other officer not below the rank of an Assistant or Deputy Collector whom it may appoint in this behalf, and may, at any time, with the like sanction, revoke such delegation.

(*2*) Subject to any general or special orders of the Governor in Council, the Court of Wards may exercise all or any of the powers conferred on it by this Act through the Collector of any district in which any part of the property of a Government ward is situated, or through any other officer not below the rank of an Assistant or Deputy Collector whom it may appoint in this behalf ; and, subject to the like orders, any such Collector or Assistant or Deputy Collector may exercise all or any of the powers delegated to him under this Act through any Revenue-officer subordinate to him not below the rank of a Mahálkari.

Appointment of manager by Court of Wards.

20. The Court of Wards may appoint a manager of the property of any Government ward under its superintendence.

Liabilities, etc., of managers appointed by Court of Wards.

21. (*1*) Every manager appointed by the Court of Wards shall

(*a*) give such security, with such sureties (if any), as the Court of Wards thinks fit for the due discharge of the trusts of his office, and for the due account of all property and moneys which come into his control or possession by reason of his office ;

(b) be entitled to such allowance as the Court of Wards thinks fit for his care and pains in the execution of his duties ; and

(c) be responsible for any loss occasioned to the property under his management by his wilful default or gross negligence ; and every such loss shall be recoverable from him and from his sureties (if any) as an arrear of land-revenue.

(2) Every manager or other servant of the Court of Wards shall be deemed to be a "public servant" within the meaning of Chapter IX of the [1] Indian Penal Code; and in the definition of "legal remuneration" contained in section 161 of the said Code, the word "Government" shall, for the purposes of this sub-section, be deemed to include the Court of Wards. Managers and other servants to be deemed public servants.

XLV of 1860.

22. (1) The Court of Wards may appoint guardians for the care of the persons of Government wards whose persons are, for the time being, under its superintendence. Power of Court of Wards to appoint guardians of certain Government wards.

(2) In appointing a guardian under this section, the Court of Wards shall be guided by the provisions of the [2] Guardians and Wards Act, 1890.

VIII of 1890.

23. Subject to the provisions of this Act and of any rules thereunder, the Court of Wards General powers of Court of Wards.

(a) may, of itself or through the manager (if any) appointed by it under this Act, do all such things requisite for the proper care and management of any property of which it assumes the superintendence under this Act, as the owner of the property, if it was not under the superintendence of the Court of Wards, might do for its proper care and management; and

(b) may, of itself or through the guardian (if any) appointed by it under this Act, do, in respect of the person of any Government ward whose person is, for the time being, under its superintendence, all such things as may lawfully be done by a guardian.

24. The Court of Wards may pass such orders as it thinks fit in respect of the custody and residence of any Government ward whose person is, for the time being, under its superintendence, and, where he is a minor, in respect of his education. Custody, residence and education of certain Government wards.

25. The Court of Wards may, from time to time, determine what sums shall be allowed in respect of the expenses of any Government ward and of his family and dependents. Allowance for Government ward, his family and dependents.

26. The Court of Wards, or the manager (if any) appointed by it under this Act, shall manage the property of every Government ward under its superintendence or under his management diligently and faithfully for the benefit of the Government ward and shall in every respect act to the best of its or his judgment for the Government ward's interest as if the property were its or his own. Duties of Court of Wards or manager.

27. The Court of Wards may, with the previous sanction of the Governor in Council, mortgage or let the whole or any part of the property of any Powers of Court of Wards as

[1] *See* Act 45 of 1860 as modified up to 1st April, 1903.
[2] General Acts, Vol. V.

to property of Government wards.

Government ward and may, with the like sanction, sell or exchange any part of such property, and may do all such other acts as it may judge to be best for the benefit of the property and the advantage of the Government ward :

provided that

(*a*) no sanction shall be necessary in the case of any lease from year to year or for a term not exceeding ten years ; and

(*b*) where one-fourth of such property has been sold or exchanged, no further sale or exchange shall be made.

Power of Court of Wards to evict.

28. The Court of Wards may summarily evict in the manner specified in section 202 of the [1]Bombay Land-Revenue Code, 1879, any person occupying, or in possession of, any immoveable property under its superintendence, to the use and occupation of which he has ceased to be entitled under any of the provisions of that Code, or which he uses or occupies in contravention of any of the provisions of this Act. Bom. V of 1879.

Recovery of arrears of rent as arrears of land-revenue.

29. Arrears of rent due by tenants in respect of property under the superintendence of the Court of Wards (whether such arrears became due before or after the assumption of such superintendence) may, under the orders of the Collector, be recovered as arrears of land-revenue.

Property under superintendence not liable to sale for arrears.

30. No immoveable property under the superintendence of the Court of Wards shall be liable to sale on account of arrears of land-revenue :

provided that all such arrears of land-revenue shall be the first charge upon the sale-proceeds of any such property which may be sold for any other cause than for arrears of land-revenue.

Notice of suit.

31. No suit relating to the person or property of any Government ward shall be brought in any Civil Court until the expiration of two months after notice in writing, stating the name and place of abode of the intending plaintiff, the cause of action and the relief claimed, has been delivered to, or left at the office of, the Court of Wards ; and the plaint shall contain a statement that such notice has been so delivered or left :

provided that notice under this section shall not be required in the case of any suit the period of limitation for which will expire within three months from the date of a notification issued under section 13, sub-section (*1*).

Manager of Court of Wards to be next friend or guardian in suit by or against Government wards.

32. Subject to the provisions of the second paragraph of section 440 of the [2]Code of Civil Procedure, in every suit brought by or against a Government ward, the manager of the Government ward's property, or , where there is no manager, the Court of Wards having the superintendence of the Government ward's property, shall be named as the next friend or guardian for the suit, as the case may be. XIV of 1882.

Payment of costs.

33. Where, in any suit brought by or against a Government ward, any Civil Court decrees any costs against the Government ward's next friend or

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[1] Vol. II of this Code, p. 631.

[2] *See* Act 14 of 1882 as modified up to 1st December, 1899.

guardian for the suit, the Court of Wards shall cause the costs to be paid out of any property of the Government ward which may, for the time being, be in its hands.

Processes against Government ward to be served on next friend or guardian.

34. Every process which may be issued out of any Civil or Revenue Court against any Government ward shall be served on the Government ward's next friend or guardian for the suit.

Authority of Court of Wards required in case of suits brought on behalf of Government wards.

35. No suit shall be brought, and no appeal in any suit shall be preferred, by any guardian or manager appointed by the Court of Wards on behalf of any Government ward unless it is authorized by an order in writing of the Court of Wards :

provided that a manager may authorize a plaint or a memorandum of appeal to be filed in order to prevent a suit or appeal from being barred by the law of limitation, but the suit or appeal shall not afterwards be proceeded with except with the sanction of the Court of Wards.

Adjudication of civil disputes between two or more Government wards.

36. (*1*) Where any question arises as between two or more Government wards of such a nature that an adjudication upon it by a Civil Court is expedient, it shall be lawful for the Court of Wards, acting through the Collector of the district in which a case might have been stated for the opinion of the Civil Court with regard to such matter under section 527 of the [1]Code of Civil Procedure, to file in the Civil Court having jurisdiction a statement containing the point or points for determination.

XIV of 1882.

(*2*) When such statement has been filed, the Court shall appoint a guardian for the suit for each ward having a separate interest, and such guardians shall thereupon conduct the case subject to the general control of the Court of Wards.

(*3*) The Court may, if it thinks fit, amend the case so stated and shall then proceed to hear and dispose of the case in the manner provided in Chapter XXXVIII of the [1]Code of Civil Procedure for the hearing and disposal of cases stated for opinion under that Chapter.

XIV of 1882.

Disabilities of a Government ward.

37. (*1*) Except with the approval of the Court of Wards, a Government ward shall be incompetent to transfer or create any charge on, or interest in, his property or any part thereof (except such interest as may be created by a will made in accordance with section 38), or to enter into any contract which may involve him in pecuniary liability ; and no suit shall be brought in any Civil Court whereby to charge any person upon any promise made after he has ceased to be a Government ward to pay any debt contracted during the period when he was a Government ward, or upon any ratification made after he has ceased to be a Government ward of any promise or contract made during the period aforesaid, whether there is or is not any new consideration for such promise or ratification.

[1] *See* Act 14 of 1882 as modified up to 1st December, 1899.

(*2*) Nothing in this section shall be deemed to affect the capacity of a Government ward to enter into a contract of marriage:

provided that a Government ward shall not incur, in connection with such a contract, any pecuniary liability, except such as, having regard to the personal law to which he is subject and to his rank and circumstances, the Court of Wards may, in writing, declare to be reasonable.

Consent of Government necessary to wills made by Government wards.

38. No will made by a Government ward shall be valid without the consent of the Governor in Council obtained, either previously or subsequently to the making of the will, on application made to him through the Court of Wards:

provided that consent shall not be withheld unless it appears to the Governor in Council that the will is contrary to the personal or special law applicable to the ward, or that it is likely to cause considerable pecuniary embarrassment to the property, or to lower considerably the influence or respectability of the family in public estimation.

Procedure when succession to Government ward's property is disputed.

39. Where, on the death of any Government ward, the succession to his property or any part thereof is disputed, the Court of Wards may, with the sanction of the Governor in Council, either retain the superintendence of the property until one of the claimants has established his claim to the same in a competent Civil Court, or institute a suit of interpleader against all the claimants.

Withdrawal of superintendence of Court of Wards.

40. Where superintendence has been assumed in pursuance of an order under section 9, sub-section (*1*) the Court of Wards shall withdraw such superintendence as soon as, in the opinion of the Governor in Council, the property is free from embarrassment.

(*2*) The Court of Wards may, with the sanction of the Governor in Council, at any time withdraw its superintendence from the person or property, or both, of a Government ward and shall withdraw its superintendence as soon as, in the opinion of the District Court, certified to the Court of Wards,

(*a*) in the case of a person disqualified under clause (*a*) of sub-section (*1*) of section 5, he attains or has attained his majority;

(*b*) in the case of a female disqualified under clause (*b*) of the same sub-section, she is fit to manage her own property;

(*c*) in the case of a person disqualified under clause (*c*) of the same sub-section, he is fit to manage his own property;

(*d*) in the case of a person disqualified under clause (*d*) of the same sub-section, he ceases to be of unsound mind and incapable of managing his affairs; and

(*e*) where it was assumed under section 4, sub-section (*1*), in the case of a family which was undivided according to Hindu law, any co-sharer ceases to be disqualified under sub-section (*1*) of section 5:

provided, *firstly*, that

(i) where a Government ward dies or ceases to be disqualified and his property is still encumbered with debts and liabilities, the Court of

Wards may, with the sanction of the Governor in Council, retain the said property under its superintendence until such debts and liabilities have been discharged ; and

(ii) in the case of land-holders referred to in section 8, sub-section (*2*), where one or more of the proprietors of a property remain disqualified although another or others have ceased to be disqualified, the Court of Wards may, with the sanction of the Governor in Council, retain the whole of the property under its superintendence, paying any proprietor who has ceased to be disqualified the surplus income accruing from his share of the estate ;

provided, *secondly*, that, where the Court of Wards withdraws its superintendence, such withdrawal shall not affect any contract entered into by the Court of Wards in the lawful exercise of its powers ; and

provided, *thirdly*, that

(*a*) no person who has once been declared disqualified under clause (*b*) or (*c*) of sub-section (*1*) of section 5, and

(*b*) except in the case of any co-sharer other than those signing an application described in section 9, sub-section (*2*), no land-holder who has been made a Government ward in pursuance of an order under section 9, sub-section (*1*),

shall be competent, on the withdrawal of such superintendence, to transfer or create any charge on or interest in his property or any part thereof for a period beyond the term of his natural life, except with the previous sanction of the Collector.

(*3*) No appeal shall lie from any opinion certified under sub-section (*2*).

Appointment of guardian in certain cases.

41. (*1*) Where, in exercise of the power conferred by section 40, the Court of Wards decides to withdraw its superintendence from the person or property, or both, of any minor, it shall, before such withdrawal, by an order in writing, appoint some person to be guardian of the person or property, or both, of the minor, and such appointment shall take effect from the date of such withdrawal.

(*2*) In appointing a guardian under this section, the Court of Wards shall be guided by the provisions of the [1]Guardians and Wards Act, 1890 ; and every guardian so appointed shall have, and be subject to, the same rights, duties and liabilities as if he had been appointed under that Act.

VIII of 1890

Withdrawal to be notified in Gazette.

42. Where the Court of Wards withdraws its superintendence from any person or property under this Act, the fact of such withdrawal shall be notified in the *Bombay Government Gazette* and in such other manner as the Governor in Council may, by general or special order, direct.

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1 General Acts, Vol. V.

Appeals.

43. (*1*) An appeal shall lie from every order, other than an order of the District Court, passed under this Act, whether original or on appeal,

(*a*) where the order is that of a Commissioner, or of any special or other officer appointed, or Board constituted, under the proviso to section 3, to the Governor in Council;

(*b*) where the order is that of a Collector, to the Commissioner, or where any such officer or Board has jurisdiction, to such officer or Board; and

(*c*) in all other cases, to the Collector.

(*2*) The provisions of sections 205 to 210, both inclusive, of the [1]Bombay Land-Revenue Code, 1879, shall apply to all such appeals. Bom. V of 1879.

Control of Governor in Council.

44. All orders or proceedings under this Act, other than orders or proceedings of the District Court, shall be subject to the supervision and control of the Governor in Council; and the Governor in Council may, if he thinks fit, revise, modify or reverse any such order or proceeding, whether an appeal is presented against any such order or proceeding or not.

Bar of suits.

45. No suit shall be brought in any Civil Court in respect of the exercise of any discretion conferred by this Act, or against the Court of Wards or any public servant or person duly appointed or authorized under this Act in respect of anything in [2]good faith done or purporting to be done under the provisions thereof or the rules made thereunder:

provided, *firstly*, that any person evicted under section 28 may sue for restitution; and

provided, *secondly*, that any tenant from whom an arrear of rent has been recovered under section 29 may sue for recovery of the amount, or any part thereof, so recovered.

Power of Governor in Council to make rules.

46. (*1*) The Governor in Council may, by notification published in the *Bombay Government Gazette*, make [3] rules to carry out the purposes and objects of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing power, such rules may

(*a*) prescribe the matters to which regard should be had in appointing or removing guardians and managers, and in fixing their remuneration;

(*b*) regulate the form, conditions and amount of security, and the number of sureties (if any), to be given by managers;

(*c*) prescribe the cases in which proposals or arrangements connected with the administration of the properties of Government wards shall be reported for the sanction of the Governor in Council;

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[1] Vol. II of this Code, p. 631.

[2] As to definition of "good faith," *see* Bombay General Clauses Act, 1904 (Bom. Act 1 of 1904), *infra*, p. 1708.

[3] For rules, *see* Bombay Government Gazette, 1908, Pt. I, p. 1474.

(*d*) prescribe the accounts and other returns, and the form and other particulars thereof, which shall be rendered to the Court of Wards and by the Court of Wards to the Governor in Council;

(*e*) regulate the custody of securities and title-deeds belonging to the estate or property of a Government ward;

(*f*) regulate the procedure in inquiries by, and in appeals from orders of, the Court of Wards;

(*g*) prescribe the mode in which powers delegated to managers are to be notified for the information of persons concerned;

(*h*) prescribe the mode in which any expenses incurred by the Court of Wards or the Collector under any power conferred by this Act may be recovered; and

(*i*) generally prescribe the manner in which the powers and duties of the Court of Wards under this Act shall be exercised and performed.

BOMBAY ACT No. II OF 1905.[1]

[28*th June*, 1905.]

An Act further to amend the [2] Gujarát Táluqdárs' Act, 1888.

Bom. VI of 1888.

WHEREAS it is expedient further to amend the [2] Gujarát Táluqdárs' Act, 1888, in manner hereinafter appearing;

55 and 56 Vict., c. 14.

And whereas the previous sanction of the Governor General required by section 5 of the [3] Indian Councils Act, 1892, has been obtained for the passing of this Act;

It is hereby enacted as follows:—

Short title.

1. This Act may be called the Gujarát Táluqdárs' (Amendment) Act, 1905.

Addition of words to section 2, sub-section (*1*), clause (*a*).

Bom. VI of 1888.

2. (*1*) To section 2, sub-section (*1*), clause (*a*), of the Gujarát Táluqdárs' Act, 1888, hereinafter called "the said Act", the following words shall be added, namely:—"and a mulgameti who holds land directly from Government".

(*2*) Sub-section (*1*) shall be deemed to have come into force on the 25th day of March, 1889:

provided that nothing in section 31 of the said Act shall be deemed to apply to any incumbrance or alienation made by such a mulgameti before the passing of this Act, except where his estate has been taken under management by a Government officer under the said Act.

Amendments of section 28.

3. (*1*) Section 28 of the said Act shall be renumbered section 28, sub-section (*1*).

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1 For Statement of Objects and Reasons, *see* Bombay Government Gazette, 1904, Pt. VII, p. 196; for Report of Select Committee, *see ibid*, 1905, Pt. VII, p. 8, and for Proceedings in Council, *see ibid*, 1904, Pt. VII, p. 205; *ibid*, 1905, Pt. VII, p. 78 h.

2 Vol. III of this Code, p. 1268.

3 Collection of Statutes relating to India, Vol. II, p. 734.